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## 1. PREFACE

This handbook was developed in an attempt to clearly state the guidelines and requirements for procurement under USDA regulations and Indiana Code. Although the Department of Education, through the Division of School Food and Nutrition, must monitor your procurement procedures we do not pretend to be experts. All procurement for the Department is governed by the State Department of Administration. We realize that within your corporation or institution there may be a purchasing agent or division that handles all your procurement activities. I would suggest that they read this material and become familiar with the requirements and compare them to the present procedures being used. Any inquiries should be made to the Director of School and Community Nutrition at (317) 232-0850, or send written correspondence to the Division, Rm.229 State House, Indianapolis Indiana 46204 c/o Frederick Powell.

## 2. DEFINITIONS

The following definitions are as they appear in the Indiana Code 13.4 State Procurement, and USDA regulations as they relate to each program: National School Lunch Program 7CFR pat 210; Child Care Food Program 7CFR part 226; Summer Food Service Program 7CFR part 225; Commodity Distribution program 7CFR part 250 & 251.

**COMMISSIONER:** as used in the Indiana Code, refers to the commissioner of the Indiana Department of Administration, who is appointed under IC 4-13-1-2. The relationship to a school corporation is the person in charge of procurement. (ie; business manager, superintendent)

**CONTRACTS:** as used in the Indiana Code means all types of state agreements, regardless of what they may be called, for the procurement of supplies and services.

**CONTRACT MODIFICATION:** as used in Indiana Code means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract; alteration is accomplished by mutual action or consent of the parties to the contract.

**CONTRACTOR:** as used in the Indiana Code means any person having a contract with the State of Indiana. This would be the same as any one who has a contract with your institution.

**COST REIMBURSEMENT CONTRACT:** means a contract under which the contractor is entitled to receive reimbursement for costs which are allowable and allocable with the contract terms and fees if any.

**INVITATIONS FOR BIDS:** as used in the Indiana Code means all documents, whether attached or incorporated by reference, used for soliciting bids. In most instances this includes the specifications for the type of service or supplies needed for your operation, and parameters for delivery. The place and time of bid opening.

**PROCUREMENT:** as used in the Indiana Code (1) means buying, purchasing, renting, leasing, or otherwise acquiring any supplies or services; and (2) includes all functions that pertain to the obtaining of any supply or service, including description of requirements, selection or solicitation of sources, preparation and award of contract, and all phases of contract administration.

**PROCUREMENT OFFICER:** as used in the Indiana Code means any person duly authorized to enter into and administer contracts and make written determinations with respect to those contracts.

definitions (cont.)

**PURCHASING AGENCY:** as used in the Indiana Code means a using agency that is authorized to enter into contracts by: (1) article 13.4 of the Indiana Code or rules adopted under this article; or (2) delegation from the department. The term department is similar to the governing body of your corporation.

**PURCHASE DESCRIPTION:** a description of the supplies or services to be purchased, and includes specific specifications attached to, or made a part of the solicitation.

**REQUEST FOR PROPOSALS:** all documents, whether attached or incorporated by reference, used for soliciting proposals. A request for proposal is when one knows what type service or supply one wishes to have, but is not sure how it should be done, then one requests a proposal on how to achieve the objective. In a situation where one knows exactly what is wanted and when it is to be done then a sealed bid procurement would be used.

**RESPONSIBLE BIDDER OR OFFEROR:** a person who has: (1) the capability to perform fully the contract requirements; and (2) the integrity and reliability that will insure good faith performance.

**RESPONSIVE BIDDER:** a person who has submitted a bid that conforms in all material respects to the invitation for bids.

**SERVICES:** the furnishing of labor, time, or effort by contractor, not involving the delivery of a specific end product other than reports that are merely incidental to the required performance.

**SPECIFICATION:** (1) any description of the physical or functional characteristics of a supply or service or the nature of a supply or service; and (2) may include a description of any requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery.

**SUPPLIES:** all property, including, but not limited to, equipment, materials, and goods, but excluding real property.

**FEDERAL SPONSORING AGENCY:** Indiana Department of Education, Division of School and Community Nutrition Programs.

**DIRECTOR OF ADMINISTRATION:** this is the Superintendent or person designated by the Superintendent to conduct procurement of supplies or services.

**DIVISION:** Is the same as the School Corporation or Recipient Agency.

### **3. WHEN SHOULD PROCUREMENT STANDARDS BE USED**

#### **A) NATIONAL SCHOOL LUNCH PROGRAM**

When a school food authority contracts with a food service management company for the management of its food service operation. Regulation 7CFR part 210.16(b) requires that an invitation to bid (sealed bid / advertised) be used to procure a food service management company. Also any purchase in excess of aggregate total of \$75,000 will be required to use formal bid procedures (this includes food). Food service management companies must follow USDA rules and regulations. The \$75,000 is the state's threshold set by State legislature. Private non-public sponsors the threshold is \$100,000 as set by USDA.

#### **B) SUMMER FOOD SERVICE PROGRAM**

If a sponsor elects to contract with a food service company to prepare and deliver meals then the sponsor must adhere to the procurement standards as outlined in regulation 7CFR Part 225.17. (3016.36(b)(4) for public sponsors and 3019.60(b) for private non-public sponsors)

USDA regulatory citations for use of procurement standards are found in:

7CFR Part 250.30(c)(1) Food Distribution Program

7CFR Part 226.22(c) Child Care Food Program

7CFR Part 225.17(b) Summer Food Service Program

7CFR Part 210.21(a) National School Lunch Program \*

The above regulations are supported by Part 3016 procurement standards for USDA entitlement and non-entitlement programs operated by State and Local governments. Also, Part 3019 procurement standards for institutions of higher education, hospitals, and nonprofit organizations.

when should procurement standards be used (cont.)

These two circulars (3016 & 3019) allow small purchase procedures for goods and services up to either the federal or state threshold. The State's threshold is the most stringent and is \$75,000 for public sponsors, and \$100,000 for private.

#### **4. USDA REGULATORY REQUIREMENTS**

The requirements as set forth in USDA regulations for each program are similar in scope. The parameters of all programs revolve around Parts 3016 & 3019.. This section will address both circulars, as well as direct citation from the regulations.

The program regulations that outline the basic requirements for procurement are; 7 CFR Part 210.16(b) & (c); 7 CFR Part 210.21. Part 210.21 will refer you to 3015, however you will use 3016 or 3019.

##### **1) GRANTEE AND GRANTOR RESPONSIBILITY**

**(A)** These standards do not relieve the grantee of any contractual responsibilities under its contracts. Grantees shall use their own procurement procedures which reflect State and local laws as they conform to the attachment. (ref. 3016 or 3019)

**(B)** "Grantees shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by federal funds." No one affiliated with the grantee (ie; employee, officer, agent) can take part in the selection or award of a contract supported by federal funds. **(A potential contractor cannot prepare and/or develop any procurement or contract documents. Part 3016.36(b)(3)(1-5) & 3019.42).**

**(C)** "The grantee shall establish procurement procedures which provide that proposed procurement shall be reviewed by grantee officials to avoid the purchase of unnecessary or duplicate items". (3016.36(4)

##### **2) CHANGES IN STANDARDS**

(1) Part 3016 prohibits any geographic preference in the evaluation of bids or proposals. Part 3019 does not prohibit this type of preference. **This prohibits the use of Indiana's business preference rule.**

**(2) Part 3016 stresses anticompetitive practices as implemented in Public Law 105-336. A potential contractor may provide specific information. However, a potential contractor cannot prepare procurement or contract documents.(specifications, invitation to bid, statement of work, RFPs, etc.)**

## USDA regulatory requirements (cont.)

The grantee shall in its evaluation consider alternatives to ensure an economical purchase is made. Alternatives are, but not limited to; 1) breakout of different items so as not to limit competition; 2) or consolidate to achieve a more equitable price and /or fee; 3) and consider lease instead of purchase.

**(D)** "Affirmative steps must be taken to assure that small and minority business firms are utilized when possible.....". The affirmative steps are outlined in the attachment and can also be found in federal regulations 7CFR Part 226.22(f)(Child Care Food Program) and 7CFR Part 225.17(e)(Summer Food Service Program). (ref. A-102 & A-110)

**(E)** " All procurement transactions regardless of whether by sealed bids or by negotiations, and without regard to dollar value, shall be conducted in a manner that provides maximum open and fair competition consistent with regulations . Procurement procedures shall not restrict or eliminate competition." Awarding of a contract should only go to the contractor who can successfully carryout the terms and conditions of the proposal. Consideration should be given to integrity, past performance, and financial stability.

## 2) METHODS OF PROCUREMENT

a) **Small purchases** - simple and informal for procurement of services, and supplies whose cost in aggregate is less than \$75,000. If this procedure is used "price or rate quotations shall be obtained from an adequate number of qualified sources." Grantee shall comply with State and local small purchase limits under \$75,000.

b) **Competitive seal bids** - (formal advertising): "Sealed bids are publicly solicited and a firm-fixed price contract is awarded to the responsible bidder whose bid, conforming with all the material items and conditions of the invitation for bid , is the lowest in price." Under formal advertising the following requirements are a must: 1) a complete specification or purchase description is available from the grantor. 2) bids shall be solicited from an adequate number of suppliers willing and able to compete. 3) a sufficient time frame shall be established between the first day of advertising and the date bids are actually opened(at least 14 days, 21 days for Food Service Management. Companies). 4) bids shall be opened publicly at a pre-designated place and time. 5) the award of the firm-fixed price contract shall be made known to the successful bidder by written notice.(ref. 3016 & 3019)

c) **Competitive negotiations** - "proposals are requested from a number of sources and the Request for Proposal is publicized..." After negotiations the contract can either be a fixed price or cost reimbursement type. (ref. A-102, A-110)

## USDA regulatory requirements (cont.)

d **Noncompetitive negotiation** -procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate." This type of procurement should be a last resort when all other methods are not feasible. Conditions for which other methods are infeasible are limited to the following: 1) the item or service is available from only one source. 2) when an emergency situation exists that will not permit competitive solicitation. 3) authorization from the state grantor agency. (ref. 3016 & 3019 )

### 3) **ADDITIONAL REQUIREMENTS**

Under the Summer Food Service Program: any bids to be accepted, and the amount exceeds the lowest bid, shall be submitted to the State for approval before acceptance. Also all bids in excess of \$100,000 shall be submitted to the State before acceptance. Each Food Service Management Co. that submits a bid over \$100,000 shall obtain a bid bond in an amount not less than 5% and not more than 10% of the value of the bid. A State Agency representative must be present at the bid opening when the bid exceeds \$100,000 in value. ( ref. Summer Food Service Regulations 7CFR Part 225 )

## **5. STATE PROCUREMENT PROVISIONS (INDIANA CODE)**

The following is a brief synopsis of procurement standards as stated under Indiana Code Article 13.4 "State Offices and Administration".

### **ARTICLE 13.4 STATE PROCUREMENT**

#### **4-13.4-2-3 Contracts for Procurement of Supplies and Services**

Sec.3(a): " This article applies to every expenditure of public funds, regardless of their source, including federal assistance monies, by any governmental body included in the definition set out in IC 4-13.4-1-16, acting under any contract for the procurement of supplies or services, except for the following: " 1) Indiana commission for higher education 2) State educational institutions, as defined by IC 20-12-0.5-1 3) Military offices and military armory boards of State 4) State Fair Board 5) Any entity established by the" General Assembly" as a body and politic

Sec.3(b) The following types of activities do not apply under this article 1) contracts between the State and its political subdivisions, except for those agreements authorized under IC 4-13.4-3-2(6). 2) contracts between governmental bodies. 3) collective bargaining agreements between a governmental body and its employees. 4) contracts between governmental bodies and bodies corporate and politic.



state procurement provisions (cont.)

#### **4-13.4-2-7 Public Access to Procurement Information**

Sec.7 Public access to procurement information except as otherwise provided by law; procurement information is public information subject to public inspection under IC 5-14.1. As added by Acts 1981 P.L. 32, Sec. 1.

#### **4-13.4-4-4 Maximum Competition**

All specifications must: 1) promote overall economy for the purposes intended. 2) encourage competition in satisfying the State's needs

#### **4-13.4-5-2 Competitive Sealed Bidding**

Sec. 2.(a) "The following procedure shall be followed by the procurement division in awarding contracts by competitive sealed bidding:" **(1)** An invitation for bids shall be issued and must include: a) a purchase description; b) all contractual terms and conditions applicable to the procurement; c) a statement of the evaluation criteria to be used, including; criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose; d) the time and place for the opening of bids; e) a statement concerning whether the bid must be accompanied by a certified check or other evidence of financial responsibility, which may be imposed in accordance with rules adopted by the department; and f) a statement concerning the conditions under which a bid proposal may be cancelled or rejected in whole or in part; **(2)** Public notices shall be given in the manner required; **(3)** Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids.

**Bids shall be :** a) unconditionally accepted without alteration or correction, except as provided in subsections(e) through (g); and b) evaluated based on the requirements set forth in the invitation for bids.

A contract shall be awarded with reasonable promptness by written notice to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids. The following information must be maintained by the procurement division and be subject to public inspection after contract is award: 1) the name of each bidder; 2) the amount of each bid; 3) and other information required by USDA rules and regulations.

#### **Evaluation Criteria**

The only criteria that may be used in bid evaluation are those specified in the invitation for bids.

#### **Correction or Withdrawal of a Bid**

Correction or withdrawal of inadvertently erroneous bids before or after award, or cancellation of awards or contracts based on such mistakes, shall be permitted in accordance with rules of the department. After bid opening, changes in bid prices or other provisions of bids prejudicial to the interest of the state or fair competition shall not be permitted.

state procurement provisions (cont.)

Except as otherwise provided by rule, all decisions to permit the correction or withdrawal of bids, or to cancel awards or contracts based on bid mistakes must be supported by a written determination made by the commissioner. The director may not accept proposed additions to the contract that are prejudicial to the interest of the state or fair competition. A decision of the director to permit a change to the requirements of the invitation for bids must be supported by a written determination made by the commissioner. As added by Acts 1981, P.L.32, sec.1 Amended by P.L.28-1983, Sec.27; P.L.31-1987,Sec.10.

#### **4-13.4-5-5 Small Purchases**

Sec. 5. (a) A procurement not exceeding five thousand dollars (\$5,000) may be made under small purchases procedures adopted by the department instead of by competitive sealed bidding as provided by section 2 of this chapter. b) procurement requirements may not be artificially divided so as to constitute a small purchase under this section. As added by Acts 1981, P.L.32,Sec 1. Amended by Acts 1982,P.L. 24,Sec.9; P.L. 31-1987, Sec.11.

#### **4-13.4-5-6 Sole Source Procurement**

Sec. 6 A contract may be awarded for a supply or service without competition when the commissioner states in writing his determination that there is only one (1) source for the required supply or service. A copy of such determination shall be made a part of the contract file. Any such proposed contract having an expenditure value exceeding fifty thousand dollars(\$50,000), along with a copy of the commissioner's determination, shall be presented to the governor for his written approval. As added by Acts 1981,P.L. 32,Sec 1. Amended by P.L. 14-1984, Sec.11. (All bids where only one bid is received, State Agency approval must be received before a contract is awarded.)

#### **4-13.4-5-7 Special Procurement**

Sec. 7 (a) Notwithstanding any other provision of this article, the commissioner may make, or authorize others to make, special procurement: 1) when there exists, under emergency conditions a threat to public health, welfare, or safety; 2) When the market structure requires the department or a governmental body to inspect and bid on the supplies to be procured; 3) for the procurement of data processing contracts or license agreements for: (a) software programs; or (b) supplies or services, when only one (1) source meets the agency's reasonable requirements; 4) when the compatibility of equipment, accessories, or replacement parts is a substantial consideration in the procurement and only one (1) source meets the using agency's reasonable requirements;

Special procurement must be made with such competition as is practicable under the circumstances. A written determination of the basis for the special procurement and for the selection of the particular contractor must be included in the contract file. Contract records for special procurement

state procurement provision (cont.)

shall be maintained in a separate file in the division and are subject to annual audit by the state board of accounts. Special procurement exceeding five thousand dollars(\$5,000), other than procurement under subsections (a)(1) and (a)(7), must be approved by the state budget agency before the contract is final. As Added by Acts 1981,P.L.32, Sec.1. Amended by P.L.28-11983, Sec.30; P.L.14-1984, Sec.12; P.L.4-1986, Sec.6; P.L.31-1987, Sec.12.

#### **4-13.4-5-12 Solicitations for Procurement**

Sec.12.(a) A solicitation for a procurement under this chapter may provide that offers will be received and contracts will be awarded separately or for any combination of a line or class of supplies or services contained in the solicitation. If the division does not indicate in the solicitation how it might award separate contracts, it may award separate contracts under this section to different offers only if the director makes a written determination showing that the award of separate contracts is in the interest of efficiency or economy. b) A solicitation for a procurement under this chapter may provide that the division will award a contract for the procurement of supplies or services for an unspecified number of items at a fixed price per unit. Such a contract may include a formula or a method for escalation of the unit price. As added by P.L.31-1987,Sec.14.

The following statements are taken from the Indiana Administrative Code:

#### **25 IAC 1.1-1-4 Competitive Sealed Bids Withdrawal**

Sec. 4 Withdrawal of a bid shall be permitted before the exact date and hour for submission of bids, either by an agent of the bidder bearing proper authorization and identification who shall receive and sign for the unopened bid packet, or by the timely receipt of a certified letter or telegram from the bidder. A bid already submitted may be modified by withdrawal of the bid as provided above and resubmission of the modified bid before the exact date and hour for submission of bids. The bid may also be modified by the timely receipt of a certified letter or telegram from the bidder. Neither the staff nor the facilities of the Department of Administration shall be available to a bidder desiring to make modifications.

#### **25 IAC 1.1-1-6 Competitive Sealed Proposals; Public Inspection**

Sec. 6 The following information shall be subject to public inspection after the contract award: (a) the request for proposal; (b) a list of all vendors who received the request for proposals; (c) the name and address of each offeror; (d) the amount of each offer; (e) a record showing the name of the successful offeror, the dollar amount of the offer, and the basis of which the award was made. (f) the entire contents of the contract file except for proprietary information which may have been included with an offer such as:

state procurement provisions (cont.)

1) trade secrets 2) manufacturing process 3) financial information not otherwise publicly available, or 4) other data which does not bear on the competitive goals of public procurement, which was not required by the terms of the request for proposals itself to be made available for public inspection. An offeror shall identify information which he proposes to remain confidential and bind it separately from the remainder of his offer. After opening, but prior to the contract award, the following information shall be subject to public inspection: (a) the request for proposals; (b) list of all vendors who received the request for proposals; (c) the name and address of each officer.

#### **25 IAC 1.1-1-9 Small Purchases**

Sec. 9 All purchases for which the amount of the ultimate expenditure is estimated not to exceed the amount set out in IAC 4-13.4-5-5(a) may be made either upon competitive sealed bids or in the open market, at the discretion of the Director. If made in the open market, a manually signed quote must be secured and shall be filed with the requisition. If practicable, two or three quotes shall be secured, but failure to do so shall not prevent the purchase from being made. (Indiana Department of Administration; 25 IAC 1.1-1-9; filed dec. 15,1981,1:45pm.: 5 IR 241)

#### **25 IAC 1.1-1-10 Sole Source Procurement**

Sec. 10. (a) The signature of the governor on a contract satisfies the requirements of this section for the governor's written approval. b) In instances where the compatibility of equipment, accessories or replacement parts is the paramount consideration , a contract may be awarded without formal competition when the Commissioner states in writing his determination that there is only one (1) source which meets the agency's reasonable requirements, on the basis of a written justification submitted by the head of the state agency desiring to procure such supplies. c) In the case of services not to exceed fifty thousand dollars (\$50,000), a contract may be awarded without formal competition when the Commissioner states in writing his determination that there is only one (1) source which meets the agency's reasonable requirements, on the basis of a written justification submitted by the head of the state agency desiring to procure such services. e) A contract may be awarded for a supply or service without competition in other instances when the Commissioner states in writing his determination that there is only one (1) source for the required supply or service. (Indiana Department of Administration; 25 IAC 1.1-1-10; filed Dec.15,1981, 1:45pm: 5 IR 241; filed Jul. 5,1983, 3:22pm: 6 IR 1371)

## 6. ACCEPTABLE CONTRACTS

This section will highlight the types of contracts that are acceptable and those not acceptable. It is a State policy that a copy of all contracts with outside agencies for the preparation and/or delivery of meals for use on any child nutrition program be on file with this office.

1. Contract requirements as stated in the regulations for each program are as follows:

**a) NSLP 7CFR Part 210.16 (c)....** contracts with food service management companies should provide for management fees established on per meal basis. "Contracts that permit all receipts and expenses to accrue to the Food Service Management Co. and "cost plus a percentage of income" and "cost plus a percentage of cost" contracts are prohibited." The duration of contracts with Food Service Management Co.'s shall be no longer than one (1) year, and options of a yearly renewal not to exceed three (3) additional years. The contract shall contain a termination clause with a sixty (60) day notification.

**b) CACFP 7CFR Part 226.22.....** contracts other than those for small purchases shall contain provisions or conditions under which legal action can be taken when contractor breeches or violates the terms of the contract. Contracts in excess of \$10,000 shall contain provisions for termination and basis for settlement. Also shall describe conditions for termination by default on the part of the contractor when circumstances beyond his control warrants it. Contracts in excess of \$10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity." (amended by E.O. 11325 Dept. of Labor regulations 41CFR Part 40) Please refer to 7CFR Part 226.22(l)(5)(6)(7) for other provisions involving executive orders.

**c) SFSPC 7CFR Part 225.16.....**with respect to Food Service Management Cos. any contract in excess of \$100,000 shall be accompanied by a performance bond in the amount not less than 10% and not more than 25% of the contract value. This bond must be furnished within ten (10) days of the awarding of the contract.

2. Contract Requirements According to Indiana Code and Parts 3016 and 3019. Unless otherwise covered in the preceding regulatory citation the following pertains to all programs.

### INDIANA CODE

#### **4-13.4-7-1 Prohibited Contracts**

Sec.1 The "cost plus a percentage of cost contract" is prohibited. As added by Acts 1981,P.L.32, Sec.1.

acceptable contracts (cont.)

#### **4-13.4-7-2 Approval of Contracts**

Sec.2. (a) except for a firm fixed price contract, the conditions of sub-section (b) must be met for the use of any contract type. (b) A contract type other than a firm fixed price contract may be used only if the commissioner determines in writing that: 1) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and 2) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles. (c) In addition to the requirements of subsection (b), a cost reimbursement contract may be used if the commissioner determines in writing that the contract is likely to be less costly to the state than any other type , or that it is impracticable to obtain the supplies or services required except under such a contract. As added b Acts 1981,P.L.32, Sec.1.

#### **4-13.4-7-3 Multiterm Contracts (specified period)**

Sec.3. Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time not to ,exceed two (2) years for supplies or services, or four (4) years for leases of equipment and related maintenance and support agreements if: 1) the term of the contract and the conditions for renewal or extension, if any, are included on the solicitation; and 2) the solicitation and contract specify that payment and performance obligations are subject to appropriation and availability of funds. As added by Acts 1981, P.L.32, Sec.1. Amended by P.L.28-1983, Sec.33; P.L.14-1984, Sec.14.

#### **4-13.4-7-5 Cancellation Due to Unavailability of Funds**

Sec. 5 When the director of the state budget agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of a multiterm contract, the multiterm contract shall be cancelled. A determination by the budget director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive. As added by Acts 1981, P.L.32, Sec.1. Amended by P.L.28-1983, Sec34; P.L.14-1984 Sec.15.

### **Parts 3016 & 3019**

**A)** Cost plus a percentage of cost type of contract is **PROHIBITED**.

**B)** Contracts other than small purchases shall contain provisions or conditions which will allow for administrative or legal remedies for contractors that may breech or violate the terms of the contract.

**C)** When the contract involves research, developmental, or experimental work the contract shall include grantor agency requirements and regulations pertaining to reporting and patent rights to any discovery or inventions which arises during the course of the contract.

acceptable contracts (cont.)

**D)** All records pertaining to the contract shall be kept on file by the contractor three years after final payment by the grantee.

**E)** Contracts in excess of \$100,000 shall contain a provision which requires compliance with Section 306 of the Clean Air Act (42 U.S.C. 1987) and Section 508 of the Clean Water Act (33 U.S.C. 1968). Also Executive Order 11738, and Environmental Protection Agency regulation 40 CFR Part 15.

**F)** All sole source contracts or where only one bid or proposal is received and the expenditure exceeds \$5,000 shall be subject to prior approval at the discretion of the State Sponsoring Agency (School & Community Nutrition).

## **7. WHICH STANDARDS SHOULD YOU USE**

**Q)** I'm a small school corporation and last year the total expenditure for our dairy products was \$8,500.00. Do I need to formally bid for our contract?

**A)** No, however make sure that you follow the guidelines for "small purchases" refer to Chapter 4 (7)(a), and other applicable citations for instance Chapter 5 article 13.4-5-5, and 25 IAC 1.1-1-9.

**Q)** When should I use formal bid procedures?

**A)** The total amount of the contract in most cases will determine the procedure to use. Any contract with a value of \$75,000.00 or more shall be awarded after a bid has been formally advertised, and publicly opened. You should follow the procedures outlined in chapter 4 (7)(b); chapter 5 article 13-4- 4-4, 13-4-5-2. Other requirements as in chapter 4 (2),(3),(4) should be adhered to also.

**Q)** Year after year I receive only one bid proposal for my bread contract. Must I still follow formal "sealed" bid procedures?

**A)** Yes, it is required based on the amount of the contract and not on the number of responses you receive. Even though stated in chapter 5 article 13.4-5-6 "Sole source procurement" "that a contract can be awarded without competition..." USDA regulations require that you use formal bid procedures for purchases in excess of \$75,000.. There may be new vendors that can compete with your present vendor; however, you will never know unless you formally solicit a bid.

which standards should you use (cont.)

**Q)** A Child Care facility contacted our school last week seeking a contract to satellite meals to their center. What procedure should I use?

**A)** If the amount of the contract will exceed \$75,000 dollars then that Child Care facility shall follow the formal bid procedure... Under non-competitive negotiation authorization from the State grantor agency (Division of School & Community Nutrition Programs) is sufficient.

**Q)** If the responsive (provided all materials requested to accompany the bid document) and most responsible (provided financial documents showing solvency) bidder is not the lowest in price, what shall I do?

**A)** Refer to chapter 4 (6), and be able to fully document why you selected the higher price bid.( Example ; did not meet specifications for product or service you are bidding for, or did not meet any other evaluation criteria as listed in the bid document.

## **8. STATE AGENCY POLICY (PROCEDURES FOR COMPLIANCE)**

1) All sole source bids for bread and milk must be submitted to the State Agency for approval before a contract can be awarded. Materials submitted must include copies of the a) legal notice (actual text as it appeared in newspaper), b) list of vendors invitation to bid was sent to, c) invitation to bid, d) any response from vendors who did not bid, e) specifications made available to vendors, f) proposed contract (form 96, State Board of Accounts form), g) any bid bonds if required.

2) Copy of any contract(s) entered into with a Food Service Management Company must be submitted to this office.

3) Copy of any contract entered into with an outside agency to prepare and deliver meals to your facility **MUST BE ON FILE IN THIS OFFICE** with your approved program contract.

4) If you participate in the Summer Food Service Program and your bid/contract will exceed \$100,000 dollars then the State Agency must be notified of the bid opening date and time. A State Agency representative should be present when bids are opened.

5) Any local program sponsor that re-processes any USDA donated commodity must use the ACDA approved contract available from the State Agency. You can request one by writing to this office.